

## **EXECUTIVE SUMMARY**

In December of 2009, following a year-long investigation by the Delaware State Police and the Delaware Department of Justice, Dr. Earl Bradley was arrested and charged with sexually molesting a number of children who were patients of his pediatric practice in Lewes, DE. During the course of that investigation, it became apparent that between Dr. Bradley's arrival in Delaware of 1994 and the beginning of the investigation in December of 2008 that ultimately led to his arrest in December of 2009, multiple individuals, entities and agencies apparently failed to comply with their obligations under Delaware law to report Dr. Bradley's criminal or unprofessional conduct to one or more of the several State agencies or entities, particularly the Board of Medical Practice (BMP) and the Department of Services for Children, Youth and Their Families, (DSCYF), that are charged with the responsibility of regulating the practice of medicine or protecting Delaware's children from abuse.

In an effort to understand these apparent failures so that they would not occur again in the future, on January 7, 2010 the Attorney General directed the State Solicitor to conduct an intensive and wide-ranging inquiry in order to determine whether any individuals, entities or agencies failed to comply with their statutory duty to report Dr. Bradley's criminal or unprofessional conduct to the appropriate State agencies or entities. Mindful of the fact that these apparent failures occurred across two decades, and involved multiple individuals, entities or agencies, the Attorney General also directed the State Solicitor to recommend any changes to the relevant laws, policies or procedures to ensure

that all Delawareans – particularly our children – will be more effectively protected from criminal, unprofessional or unethical conduct by Delaware’s medical professionals.

The State Solicitor and his team of lawyers and investigators have now completed their investigation. During the course of his inquiry, full use was made of the Department’s power to issue subpoenas and compel the testimony of witnesses and the production of documents. More than 20 witnesses were interviewed – many under oath. Thousands of pages of documents were obtained and reviewed. In some cases, the Department was forced to resort to court action to gain access to necessary documents. The various provisions of Delaware law regulating the medical profession and mandating the reporting and investigation of child abuse, or criminal or unprofessional conduct committed by medical professionals were studied in detail, along with any court cases construing those statutes. The policies and procedures employed by various state agencies and entities, including the BMP, DSCYF, the Delaware Department of Justice and Delaware’s law enforcement agencies were also closely examined.

### *A Broken System*

The State Solicitor has concluded that between 1994 and 2008 multiple individuals, entities and agencies – including various medical professionals, the Medical Society of Delaware, Beebe Hospital and law enforcement failed to comply with their statutory obligations to report or investigate suspected instances of child abuse or criminal or unprofessional conduct by a medical professional. More importantly, these failures have led the State Solicitor to conclude that that the system of laws, regulations

and policies designed to facilitate prompt and effective reporting and investigation of criminal or unprofessional conduct by medical professionals is seriously deficient and inadequate to the task. The fact that so many highly qualified professionals in the medical and law enforcement communities, all of whom have devoted their professional lives to the protection of the health and safety of their fellow Delawareans, failed to report Bradley's unprofessional conduct stands as proof positive of that fact. These deficiencies were not unique to the Bradley case – of the 314 complaints of unprofessional conduct by a medical professional made to the BMP over the last decade only 31 were filed by doctors and 4 were filed by law enforcement agencies. Consequently, the State Solicitor has recommended 28 specific changes to the laws, regulations and policies that govern the regulation of Delaware's medical professionals and mandate the reporting of criminal or unprofessional conduct by those professionals to the various relevant state agencies or entities.

### *The Medical Practice Act*

The Medical Practice Act (MPA) is a set of laws that regulate the practice of medicine in Delaware. It created the Board of Medical Practice (BMP), which is the regulatory agency with authority to enforce the MPA. The MPA mandates that medical professionals, the Medical Society of Delaware, hospitals, state agencies and law enforcement agencies must report criminal, unethical or other misconduct committed by medical professionals to the BMP. However, the BMP has no enforcement power over entities such as hospitals, state agencies or law enforcement agencies. It does not appear that the BMP has ever levied a fine against any individual, entity or agency as a

consequence of a failure to comply with the mandatory reporting requirements of the MPA. The MPA explicitly permits the BMP to enter into agreements that partially delegate its enforcement or investigative functions to private entities, such as the Medical Society of Delaware (MSD)– an association comprised entirely of doctors.

The MPA’s mandatory reporting requirements are not well-tailored to meet the operational realities and organizational structures of Delaware’s law enforcement agencies. The wording of the MPA does not make it clear whether the mandatory reporting requirement is triggered by a criminal investigation that does not result in the arrest or conviction of a doctor or other medical professional. Although Delaware’s courts (and the Federal courts) have long recognized the existence of a “governmental investigative privilege” that permits the State to maintain secrecy during a criminal investigation while it is ongoing, the MPA is silent as to that issue. In fact, under current law, a report to the BMP during a criminal investigation must be revealed to the physician under investigation within one week of receiving the complaint. The MPA is also silent as to which law enforcement agency is responsible for making a mandatory report in cases involving multiple enforcement agencies (such as a criminal case *investigated* by one police agency and *prosecuted* by the Department of Justice). By requiring *all* agencies to report, responsibility for doing so is shared, and therefore diffused, inviting a lack of clarity in responsibility.

### *The Board of Medical Practice*

Dr. Bradley applied to the BMP for a Delaware medical license in December of 1993. At that time he was licensed and practicing in Philadelphia, PA. In April of 1994 he was granted a Delaware medical license. In June of 1994, authorities in Pennsylvania received a complaint from a woman that alleged that Dr. Bradley had sexually molested her daughter, one of his patients. In July of 1994 the BMP learned of the Pennsylvania investigation from the complainant herself. The BMP decided to rely upon the Pennsylvania authorities to investigate the complaint, despite the fact that the MPA required the BMP to do its own investigation. The Pennsylvania investigation was closed without any prosecutive action in 1995. It is unclear what the BMP knew of the merits of the Pennsylvania complaint or its investigation: none of the correspondence between the BMP and the Pennsylvania authorities was provided to the State Solicitor by the BMP during the course his investigation.

In 2005, the Milford Police Department (MPD) investigated Doctor Bradley following its receipt of a criminal complaint alleging offensive touching allegedly committed against a three year-old girl, one of his patients. At the conclusion of the investigation the Delaware Department of Justice concluded that, in light of the admissible evidence gathered, probable cause did not exist to initiate a criminal prosecution. The assigned prosecutor recommended to his supervisors that the allegations be referred to the BMP. After discussions between the investigating detective and the assigned prosecutor, the Detective contacted the Division of Professional Regulation (DPR) by telephone to report the existence of his investigation. The MPA

requires that the report to the BMP be made in writing. Neither the MPD nor the DOJ made a written report to the BMP. Although the MPA permits the BMP to investigate oral complaints, in this instance it declined to do so. This was the only report pertaining to Dr. Bradley ever made to the BMP.

### *Individual Physicians*

During the course of the 2005 investigation of Dr. Bradley by the Milford Police Department, the detective assigned to the case learned about and then interviewed two licensed physicians who had expressed concerns about Dr. Bradley's unprofessional behavior towards his young female patients. One of these physicians referred to Dr. Bradley as a "pedophile" while discussing him with colleagues. The other had received a number of former patients of Dr. Bradley who reported inappropriate touching or examinations. Neither of these physicians reported their concerns to the BMP, and in our view their failure to do so violated the mandatory reporting statute.

### *Beebe Hospital*

Dr. Bradley began working at Beebe in July, 1994. Records obtained from Beebe reveal that the President of Beebe became aware of the Pennsylvania investigation that had begun in June of 1994 prior to Dr. Bradley's appointment to the hospital staff. In November of 1996 Beebe received an internal complaint about Dr. Bradley's unprofessional behavior towards his young female patients. The hospital failed to report these complaints to the BMP as required by the mandatory reporting provisions of the MPA. In 1998, Beebe Hospital received more complaints alleging that Dr. Bradley was

behaving inappropriately with some of his female patients. Once again, the hospital failed to report these allegations to the BMP. In 2005, after learning of the Milford Police investigation of Dr. Bradley, Beebe Hospital restricted his privileges by requiring that all of his patient contacts occur in the presence of a chaperone. The MPA requires mandatory notification to the BMP whenever the hospital privileges of a doctor are limited in response to “possible unprofessional conduct.” Beebe Hospital violated the MPA when it failed to report the chaperone requirement to the BMP.

#### *Medical Society of Delaware*

The Medical Society of Delaware (MSD) is a non-profit association of physicians dedicated to “promoting the practice and profession of medicine.” In 2004, Dr. Bradley’s sister, Linda Barnes, faxed a letter to the MSD that enumerated multiple issues of serious concern pertaining to her brother. Her stated hope was to obtain psychiatric and medical treatment for her brother “in an attempt to help him from destroying his practice and his life.” A complete copy of this letter, obtained by the Milford Police from Ms. Barnes in 2005, includes an assertion that the parents of Dr. Bradley’s female patients were accusing him of improperly touching their daughters. An incomplete copy of the letter, provided to the State Solicitor by the MSD, omits these accusations but includes Ms. Barnes’s descriptions of other behavioral and financial problems suffered by Dr. Bradley. Minutes of a November, 2004 meeting of the Physicians’ Health Committee of the MSD record that Ms. Barnes’s letter was discussed in detail, and that the Committee ultimately determined that the matter should be referred to the BMP. Nonetheless, neither the MSD, its President nor any of the members of the

Physicians’ Health Committee – all of whom were aware of at least some of Ms. Barnes’s allegations – referred her concerns to the BMP. Their failure to do so was a violation of the mandatory reporting provisions of the MPA.

### *Recommendations*

The State Solicitor has 28 separate recommendations, including 22 statutory changes to the laws, policies and procedures that regulate Delaware’s medical professionals and mandate the reporting of criminal or unprofessional conduct by those professionals to the various relevant state agencies or entities. These include:

- eliminating the BMP’s authority to delegate its investigative and disciplinary functions to private entities
- clarifying the relationship of the BMP and the MPA’s mandatory reporting provisions to law enforcement agencies, particularly during an ongoing criminal investigation
- requiring the BMP and DPR to report complaints alleging criminal conduct by medical professionals to law enforcement agencies
- providing DPR investigators with access to police reports and criminal history information
- amending the MPA to provide that the BMP may impose discipline in cases involving sexual misconduct and, in certain instances, simple negligence
- empowering the BMP to impose discipline upon a medical professional who violates his or her statutory duty to report unprofessional conduct by another medical professional
- authorizing the BMP to investigate verbal or anonymous complaints of unprofessional conduct
- improving training to law enforcement and agency personnel pertaining to the requirements of the mandatory reporting provision of the MPA and the Child Abuse Prevention Mandatory Reporting Law
- encouraging all entities and state agencies to implement organization-wide policies pertaining to the reporting of unprofessional conduct by medical professionals
- amending the Child Abuse Prevention Mandatory Reporting Law to extend its coverage to agencies and entities

While we will never know if a report to the Board of Medical Practice would have stopped Earl Bradley from harming more patients, we do know that the public will be



best served if our findings are used to spark important improvements in Delaware law that will lead to a safer environment for patients. The Attorney General's Office looks forward to working with the Governor and the General Assembly on specific legislation to enact these recommendations.